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7 UNITED STATES OF AMERICA

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, )  
11 )  
12 Plaintiff, )  
13 v. )  
14 STEVEN RIZZO, )  
15 Defendant. )

Magistrate Case No. 07MJ0696

(Superseding)  
STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON

(Pre-Indictment Fast-Track Program)

16 IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES  
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and  
18 Steven De Salvo, Assistant United States Attorney, and defendant STEVEN RIZZO, by and through  
19 and with the advice and consent of defense counsel, Marc Xavier Carlos, that:

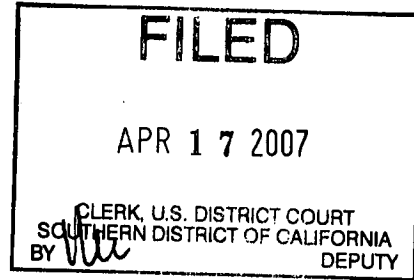
20 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
21 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
22 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
23 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
24 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.  
25 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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27 //

28 //

SDD:rp:4/2/07



1           2.       Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3.       Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **March 26, 2007**.

6           4.       The material witness, Victoria Mota-Mireles, in this case:

7               a.       Is an alien with no lawful right to enter or remain in the United States;

8               b.       Entered or attempted to enter the United States illegally on or about  
9 March 27, 2007;

10              c.       Was found in a vehicle driven by defendant at the San Ysidro, California Port  
11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that she was an  
12 alien with no lawful right to enter or remain in the United States;

13              d.       Was having others pay on her behalf \$4,000 to others to be brought into the  
14 United States illegally and/or transported illegally to her destination therein; and,

15              e.       May be released and remanded immediately to the Department of Homeland  
16 Security for return to her country of origin.

17           5.       After the material witnesses are ordered released by the Court pursuant to this  
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21              a.       The stipulated facts set forth in paragraph 4 above shall be admitted as  
22 substantive evidence;

23              b.       The United States may elicit hearsay testimony from arresting agents  
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
26 of (an) unavailable witness(es); and,

27              c.       Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),

28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Steven Rizzo

1 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
2 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
3 waives the right to confront and cross-examine the material witness(es) in this case.

4 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
5 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
6 further that defendant has discussed the terms of this stipulation and joint motion with defense  
7 counsel and fully understands its meaning and effect.

8 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
9 immediate release and remand of the above-named material witness(es) to the Department of  
10 Homeland Security for return to her country of origin.

11 It is STIPULATED AND AGREED this date.

12 Respectfully submitted,

13 KAREN P. HEWITT  
United States Attorney

14  
15 Dated: 4/17/07

16 STEVEN DE SALVO  
Assistant United States Attorney

17  
18 Dated: 4/17/07

19 MARC XAVIER CARLOS  
Defense Counsel for Steven Rizzo

20  
21 Dated: 4/17/07

22 STEVEN RIZZO  
Defendant

**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to her country of origin.

**SO ORDERED.**

Dated: 4/17/2007

  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )

Plaintiff )

vs. )

Steven Rizzo )  
Defendant(s) )

CRIMINAL NO. 07 CR 939-GT

ORDER

RELEASING MATERIAL WITNESS

Booking No.

On order of the United States District Magistrate Judge,

Ruben B. Brooks

IT IS HEREBY ORDERED that the following named person heretofore  
committed to the custody of the United States Marshal as a material witness be  
released from custody: (Bond Posted / Case Disposed / Order of Court).

Victoria Mota-Mireles

DATED: 4/17/07

RECEIVED

DUSM

Ruben B. Brooks  
UNITED STATES DISTRICT/MAGISTRATE JUDGE

OR

W. SAMUEL HAMRICK, JR. Clerk

by

Deputy Clerk